

1
2
3
4
5
6
7
8 IN RE CARY LEE PETERSON,
9
10 Petitioner.

11 Case No. 23-cv-01022 BLF (PR)

12 **ORDER GRANTING MOTION FOR
13 VOLUNTARY DISMISSAL;
14 GRANTING REQUEST FOR
15 REFUND OF FILING FEE**

16 (Docket No. 8)

17 On March 7, 2023, Petitioner, a federal prisoner proceeding *pro se*, filed an
18 “emergency” habeas corpus petition and motion for rehearing. Dkt. No. 1. On March 15,
19 2023, in response to the Clerk’s notice, Petitioner paid the \$402 filing fee. Dkt. No. 5.

20 On April 7, 2023, Petitioner filed a motion for voluntary dismissal. Dkt. No. 8 at 2.
21 Good cause appearing, the motion for voluntary dismissal of this matter as moot is
22 **GRANTED.**

23 Petitioner also requests “as a one time courtesy” that the Court refund the court fee
24 paid in whole or part. *Id.* at 3. The Court notes that his filing should have been construed
25 as a petition for writ of habeas corpus under 28 U.S.C. § 2255, which is not subject to
26 filing fees. Accordingly, the Court’s financial office is directed to refund the filing fee to
27 Petitioner.

28 ///

CONCLUSION

For the foregoing reasons, Petitioner's request for voluntary dismissal is **GRANTED**. Dkt. No. 8. The petition is **DISMISSED** without prejudice.

The Clerk shall send a copy of this order to the Court's financial office to process Petitioner's refund.

This order terminates Docket No. 8.

IT IS SO ORDERED.

Dated: April 14, 2023


BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California

Order Granting Req. for Vol. Dism; Granting Refund
P:\PRO-SE\BLF\HC.23\01022Peterson_vol.dism.docx